

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**KING ARTHUR MOVING EXPRESS  
LLC,**

**Respondent.**

**Docket No. FMCSA-2010-0204<sup>1</sup>  
(Western Service Center)**

**ORDER DENYING PETITION FOR RECONSIDERATION**

**1. *Background***

On April 16, 2010, the California Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) served a Notice of Claim (NOC) on King Arthur Moving Express, LLC (Respondent).<sup>2</sup> The NOC, based on an April 1, 2007 compliance review, charged Respondent with three violations of the Federal Motor Carrier Commercial Regulations: (1) one violation of 49 CFR 375.215, failing to charge the applicable tariff rate for household goods transportation, with a proposed civil penalty of \$1,100; (2) one violation of 49 CFR 375.401(a), failing to make a written estimate based on a physical survey of the shipper's household goods when the household goods are within 50 miles of the carrier's or carrier's agent's location, with a proposed civil penalty of \$1,100; and (3) one violation of 49 CFR 375.405(b)(7), failing to reaffirm or negotiate the written non-binding estimate listing additional household goods or services, with a

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<sup>1</sup> The prior case number was CA-2010-0413-US1164.

<sup>2</sup> See Exhibit 1 to Field Administrator's Answer and Opposition to Petition for Reconsideration Pursuant to 49 CFR 386.64 and Memorandum of Law in Support (Claimant's Answer to Petition).

proposed civil penalty of \$1,100. The NOC proposed a total civil penalty of \$3,300 for the violations.

After Respondent failed to respond to the NOC, the Field Administrator for the FMCSA's Western Service Center (Claimant) served a Notice of Default and Final Agency Order (NDFAO) on May 25, 2010.<sup>3</sup> The NDFAO advised Respondent that the NOC would become the Final Agency Order in this proceeding effective June 1, 2010, with the civil penalty immediately due and payable on that date.

On June 1, 2010, Respondent served on Claimant correspondence responding to the NDFAO, which Claimant has construed as a Petition for Reconsideration.<sup>4</sup> Respondent requested that it be permitted to pay the \$3,300 penalty proposed in the NOC in 33 payments of \$100 each.

In his Answer to the Petition for Reconsideration served June 28, 2010, Claimant requested that the petition be denied because: (1) Respondent defaulted by failing to timely reply to the NOC; and (2) Respondent failed to provide sufficient grounds for vacating the Final Agency Order.

## **2. Decision**

Because Respondent did not reply to the NOC within 30 days of service of the NOC, as required by 49 CFR 386.14(a), it defaulted.<sup>5</sup> Under 49 CFR 386.64(b), a Notice of Default and Final Agency Order issued by a Field Administrator based on failure to

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<sup>3</sup> See Exhibit 3 to Claimant's Answer to Petition.

<sup>4</sup> See Exhibit 5 to Claimant's Answer to Petition.

<sup>5</sup> The NOC reply deadline was May 21, 2010. This date was calculated by adding 30 days to the April 16, 2010 service date of the NOC and an additional five days because the NOC was served by mail. See 49 CFR 386.8(c)(3).

timely reply to the NOC may be vacated if Respondent can demonstrate, in a timely filed Petition for Reconsideration, excusable neglect, a meritorious defense, or due diligence in seeking relief.

Respondent failed to meet its burden of demonstrating that the Final Agency Order should be vacated. Claimant established that Respondent received the NOC on April 20, 2010.<sup>6</sup> Because Respondent provided no explanation for failing to respond to the NOC, it has not shown that its failure to timely reply to the NOC was due to excusable neglect. Moreover, Respondent did not offer any defenses to the alleged violations.

Section 386.64(b) authorizes—but does not require—the Assistant Administrator to vacate the Final Agency Order if Respondent acts with due diligence in seeking relief. Although Respondent arguably acted with due diligence by filing its Petition for Reconsideration within a few days after receiving the NDFAO, it would be an empty exercise or futile gesture to vacate the Final Agency Order if it is unable to demonstrate a meritorious defense.<sup>7</sup>

The Petition for Reconsideration is denied. The Notice of Claim is the Final Agency Order in this proceeding.<sup>8</sup>

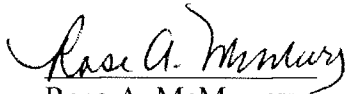
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<sup>6</sup> See Exhibit 2 to Claimant's Answer to Petition.

<sup>7</sup> See *In the Matter of Wells & Wells Equipment, Inc.*, Docket No. FMCSA-2006-25836, Order on Reconsideration (October 8, 2008), at 5.

<sup>8</sup> The civil penalty of \$3,300 is due and payable immediately. Payment may be made electronically through FMCSA's registration site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Claimant at the address shown in the Certificate of Service.

*It Is So Ordered.*

A handwritten signature in cursive script, reading "Rose A. McMurray".

Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

7-29-10

Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 30 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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King Arthur Moving Express, LLC  
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